IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5938 OF 2005

Jyoti Builders a Partnership
Firm & Ors. .. Petitioners

Vs.

Mr.Nalin Jamnadas Tejura & Ors. ..Respondents

Mr.Nihar Ghag with Mr.Ashish S.Naik for the petitioners

Mr.C.N.Chavan for respondent no.1, 5, 7, 9 to 12, 13 to 17 and 19 for the respondents

CORAM : S.U.KAMDAR, J
DATED : 22ND DECEMBER, 2005

P.C.:

1. The present petition challenges the order passed by the City Civil Court dt.25.2.05 interalia refusing to grant permission to the petitioners to file written statement. Suit is sought to be proceeded with without written statement being filed by the petitioners. The only contention raised by the learned counsel for the respondents is that writ of summons were served and that direction were already given to file written statement and inspite of direction written statement has not bene filed. I have perused the

proceedings and I am of the opinion that this is a fit case in which written statement can be permitted to file. There is in fact a dispute whether the writ of summons are served and thus, period for filing a written statement commences or not. It is the case of the respondents that the petitioners had waived the service of writ of summons and had filed Vakalatnama. Suit is of 2000 and the proceedings are still in progress. In my opinion, in the light of the judgment of apex court in the case of Rani Kusum (Smt.) Vs. Kanchan Devi (Smt.) and Others reported in (2005) 6 SCC 705 wherein it is held that court can in appropriate cases exercise jurisdiction for extension of time to file written statement, the trial court ought to have extended the time.

2. As a matter of last chance petitioners can be given an opportunity to file written statement. Petitioners to file written statement within 2 weeks from today failing which petitioners case will be treated as exparte. If written statement is filed Trial Court to proceed with the suit from the said stage itself. Writ Petition disposed of

accordingly. No order as to costs.